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Supreme Court of the United States

OCTOBER TERM, 1947

No. 171

MARY BELL KING, *Petitioner,*

vs.

THE ORDER OF UNITED COMMERCIAL TRAVELERS OF AMERICA

BRIEF CONTRA PETITION FOR WRIT OF CERTIORARI

E. W. DILLON,
Columbus, Ohio
F. DEAN RAINEY,
C. F. HAYNSWORTH, JR.,
Greenville, S. C.
Counsel for Respondent.

BRIEF OF RESPONDENT

I.

INDEX

Subject Index.

The opinion of the District Court 1
The opinion of the Circuit Court of Appeals 1
Grounds on which the Petitioner seeks to invoke the jurisdiction of the Supreme Court 2
Argument 2

Table of Cases Cited

King v. Commonwealth Life Ins. Co. of Louisville, Ky., Judgment Roll No. 33454, Office of the Clerk of Court of Common Pleas, Spartanburg County, S. C. 3
Rhodes v. Railroad Company, 6 S. C. 385 3

II.

THE OPINIONS OF THE DISTRICT COURT AND COURT OF APPEALS

The opinion of the District Court was filed May 24, 1946, and reported in 65 Fed. Sup. 740.

The opinion of the Circuit Court of Appeals was filed April 9, 1947, and reported in 161 F. 2d 108.

III.

GROUNDS ON WHICH THE PETITIONER SEEKS TO INVOKE THE JURISDICTION OF THE SUPREME COURT

The petition for a writ of certiorari is founded upon an assertion of conflict between the decision of the Circuit Court of Appeals for the Fourth Circuit and the laws of the State of South Carolina.

IV.

ARGUMENT

The petition is founded upon an asserted conflict between the decision of the Circuit Court of Appeals for the Fourth Circuit and the laws of South Carolina, but there is no decision of any court in South Carolina which would constitute a precedent in any court of that State or which is controlling upon any of the courts of the United States, insofar as the question involved in this case is concerned.

The Petitioner here concedes in her brief filed in the United States Circuit Court of Appeals for the Fourth Circuit that, "it is true that the Supreme Court of South Carolina has not decided the question presented by the facts of this case". (Brief of Appellee in Circuit Court of Appeals, p. 11). The Supreme Court of South Carolina is the only court in that State the decisions of which are reported, and only its decisions constitute precedents in that State.

The Petitioner does refer to a decision of a court of original incidence in South Carolina—that of the Court of Common Pleas for the Seventh Judicial Circuit, filed in the office of the Clerk of the Court of Common Pleas for Spartanburg County, South Carolina, and rendered in the case

of *King v. Commonwealth Life Insurance Company of Louisville, Kentucky.*

While the Courts of Common Pleas in South Carolina have very limited appellate jurisdiction, principally as to appeals from Magistrates' Courts (comparable to Justices of the Peace, in other states), they are primarily courts of original incidence. They have original jurisdiction of all civil litigation, though Magistrates' Courts and certain County Courts have limited concurrent jurisdiction. *Rhodes v. Railroad Company,* 6 S. C. 385. In the Courts of Common Pleas civil actions are begun by the service of a summons and complaint and issues of fact in law cases are tried before a jury.

The Courts of Common Pleas in South Carolina are in no sense comparable to the Court of Appeals in Ohio or to the other intermediate appellate courts existing in a number of the more populous states. They are trial courts. Their decisions, orders, and decrees are not published. Short of an examination of every judgment roll in the office of every clerk of those courts in every county in the State of South Carolina, there is no means of determining what, if any, other decisions may have been rendered in the Courts of Common Pleas of South Carolina pertinent to the merits of this case.

A decision of a Court of Common Pleas in South Carolina is not a precedent in that or any other court in South Carolina. Indeed the Petitioner here, in her brief in the Circuit Court of Appeals for the Fourth Circuit, conceded with reference to the case of *King v. Commonwealth Life Insurance Company of Louisville, Kentucky,* "We do not argue that the decision of Judge Sease is binding on this Court • • • •". (Brief of Appellee in Circuit Court of Appeals, p. 12).

It would be anamolous indeed if the courts of the United States were bound to follow a decision of a state court which did not constitute a precedent in any court of the state in which it was rendered.

For the foregoing reasons it is respectfully submitted that the petition should be denied.

Respectfully submitted,

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